

# KING & SPALDING

2500 TRUST COMPANY TOWER

ATLANTA, GEORGIA 30303

404/572-4600

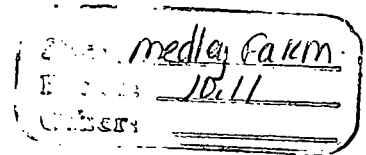
TELEX: 54-2917 KINGSPALD ATL

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CABLE: TERMINUS

January 19, 1988



1730 PENNSYLVANIA AVENUE, N. W.  
SUITE 1200

WASHINGTON, D. C. 20006

202/737-0500

TELECOPIER: 202 737-5714

## BY HAND DELIVERY

Mr. Lee A. DeHihns, III  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

Re: Medley Farm Site

Dear Mr. DeHihns:

Your letter of January 14, 1988, was received by me on January 19. I am disappointed and troubled that EPA is unwilling to meet with the steering committee to negotiate an acceptable order. EPA's refusal to meet suggests that the agency is not interested in good faith negotiations.

I enclose an order which has been agreed to by the members of the Medley Farm Site Steering Committee. This order does not require the agency to preauthorize the steering committee's costs. However, this order does contain provisions for stipulated penalties and for dispute resolution which are consistent with orders issued by the agency for other sites. I also enclose three RI/FS consent orders issued by the agency. Each of these orders contains the provisions which the steering committee has requested for the Medley order. Two of these involve our client, National Starch and Chemical Corporation. The third order involving the Yellow Water Road site was executed by EPA in September of 1987. In response to your specific concerns about delineating the major milestones as to which stipulated penalties should be assessed, we have incorporated the major milestones identified in the Yellow Water Road order. In light of the agency's willingness to enter into the other orders, there can be no valid reason for not entering into the order at the Medley site.

If the agency is unwilling to accept the provisions of the enclosed consent order or is unwilling to meet with the members of the steering committee to negotiate in good faith, then the steering committee will begin the RI/FS as if the enclosed consent order had been executed. Should the agency seek to

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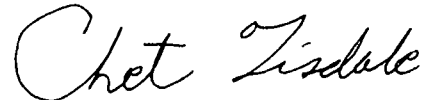


Mr. Lee A. DeHihns, III  
January 19, 1988  
Page 2

implement its own RI/FS, counsel for the Medleys has advised the other members of the steering committee that the Medleys will refuse the agency access and will require the agency to seek a court order. The steering committee will then present to the court its good faith proposal to conduct the RI/FS and to enter into an order which is similar to other orders which EPA has agreed to.

I would appreciate your careful review of the enclosed orders at other sites. The steering committee's proposed order is identical to other orders entered into by EPA. EPA's refusal to accept this order cannot be justified.

Sincerely,

A handwritten signature in cursive script that reads "Chet Tisdale".

Charles H. Tisdale, Jr.

CHT/lp  
Enclosures

cc: Mr. R. Wayne Lee  
Ms. V. Ann Heard  
Mr. Jay Sargent  
The Medley Farm Site Steering Committee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:	)	
	)	U.S. EPA DOCKET NO.: 88-09-C
MEDLEY FARM SITE	)	
Gaffney, Cherokee County	)	Proceeding under Sections 104
South Carolina	)	and 122 of the Comprehensive
	)	Environmental Response, Compen-
	)	sation and Liability Act of 1980
	)	(42 U.S.C. §§ 9604 and 9622) as
NATIONAL STARCH AND CHEMICAL	)	amended by the Superfund Amend-
CORPORATION; MR. BARRY MEDLEY;	)	ments and Reauthorization Act of
MEDLEY CONCRETE WORKS; ETHOX	)	1980, P.L. 99-499, October 7,
CHEMICALS; MILLIKEN AND CO.;	)	1986.
MR. CLYDE MEDLEY; MRS. GRACE	)	
MEDLEY; ABCO; TANNER CHEMICAL;	)	
POLYMER INDUSTRIES; and MR.	)	
<u>RALPH MEDLEY: and</u> + BASF	)	
CORP.,	)	
	)	
Respondents.	)	
	)	

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereafter called "EPA") with the Respondents who have executed this Consent Order pursuant to the authority vested in the President of the United States by Section 104, and Section 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereafter called "CERCLA"), 42 U.S.C. § 9604 and § 9622(d)(3), as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereafter called "SARA"). This authority was delegated by the President to the Administrator of EPA by Executive Order 12580 dated January 26, 1987, 52 Federal Register 2923 (Jan. 29, 1987) and has been further delegated to the Regional Administrator of EPA Region IV.

The Respondents agree to undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of a remedial investigation and feasibility study at the Medley Farm Site and any additional work agreed to pursuant to Section VI.K. below.

Solely for the purposes of this Consent Order, the Respondents consent to and agree not to contest EPA jurisdiction to issue this Consent Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA. Provided however, the Respondents do not admit, accept, concede, or acknowledge, and specifically deny the determinations, allegations, findings of fact, and conclusions of law made by EPA in this Consent Order and specifically reserve the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Medley Farm Site (hereafter called the "Site") other than actions brought by EPA to enforce this Consent Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Consent Order, waive any rights they may have to assert claims under CERCLA/SARA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), or the Superfund.

## II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondents are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants and/or contaminants from the Site (Remedial Investigation), and (2) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants and/or contaminants from the Site (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 C.F.R. Part 300.68(a) - (j).

## III. EPA FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

- A. The Site is located on County Road 72 off State Route 18 in White Plains Township, Cherokee County, South Carolina, approximately six miles south of Gafney, South Carolina.
- B. The disposal area is an approximately 7-acre plot of land within a 65.4 acre parcel owned by Ralph C. Medley.
- C. EPA alleges that the Respondents are owner/operators of the Site and the generators of waste present at the Site.

- D. The Site was proposed for inclusion on the National Priorities List in May of 1986 as defined in Section 105 of CERCLA, 42 U.S.C. § 9605.
- E. Present at the Site in May 1983 were a large number of drums in deteriorating condition and six small lagoons of waste.
- F. Samples collected by U.S. EPA and the State of South Carolina revealed the presence of the following hazardous substances: methylene chloride, vinyl chloride, tetrachloroethylene, phenol, toluene, trichloroethylene, and 1,2-dichloroethane and polychlorinated biphenyls (PCBs).
- G. An immediate removal action was initiated by U.S. EPA Region IV on June 20, 1983 and was completed on July 21, 1983. The cleanup activities consisted of removing 5,383 55-gallon drums and 15-gallon containers, an estimated 70,000 gallons of water and an unknown volume of sludge and solid waste materials from the six small on-site lagoons. After the contents of the lagoons were treated and removed, the lagoons were back-filled.
- H. Presently, the Site has a graded dirt surface with observable leachate moving from the Site to a southeastern gully.
- I. The land use in the vicinity of the Site is primarily agricultural (farms and cattle) and residential (population approximately 1,000).

#### IV. CONCLUSIONS EPA CONCLUSIONS OF LAW

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. Chemicals found at the Site are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- D. The hazardous substances described above were disposed of at the facility in such a manner that they have been released into the environment and their potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

#### V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health and/or welfare and/or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.
- C. In accordance with Section 104(a) of CERCLA, 42 U.S.C. § 9601(a)(1), as amended by SARA, EPA has determined that the Respondents will properly and promptly conduct the RI/FS and are qualified to do so.

#### VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site cleanup. Prior to the initiation of the Site work, the Respondents shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

If the Respondents determine it is necessary to remove the present engineer/geologist/contractor from the Site during the RI/FS process, then a full account and rationale for making this change should be submitted in writing to EPA within ten (10) working days of the dismissal of the present engineer/geologist/contractor.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

- A. Within thirty (30) calendar days of the effective date of this Consent Order, the Respondents shall hire a consultant to perform the RI/FS. Within 60 calendar days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to the Respondents by EPA ("Guidance For Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1987) and with Section 121 of the Superfund Amendments and Reauthorization Act of 1986. As described in this guidance, the RI/FS Work Plan must include, at a minimum, a sampling plan and a schedule for deliverables and for completing the RI/FS. The Project Operations Plan ("POP") shall be submitted within thirty (30) calendar days after EPA approval of the RI/FS Work Plan. The POP must

include: (1) a detailed sampling plan, (2) a health and safety plan, (3) a plan for satisfaction of permitting requirements; (4) a description of chain-of-custody procedures, and (5) a description of quality control and quality assurance procedures. The RI/FS Work Plan and all other reports and plans shall be subject to review, modification, and approval by EPA. The POP must be consistent with an incorporate all of the requirements which are set forth in the EPA, Region IV Support Branch Standard Operating Procedures and Quality Assurance Manual which is dated April 1986. The POP must be consistent with any amendment to this manual.

- B. Within forty-five (45) calendar days after receipt of the RI/FS Work Plan but EPA, EPA shall notify the Respondents in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.
- C. Within thirty (30) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondents shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan and upon completion of the dispute resolution process contained in Section XII herein below, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA/SARA.
- D. The Respondents shall implement the tasks detailed in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan"), subject to the provisions of Section XII herein below. Upon approval by EPA, the RI/FS Work Plan will be attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents, and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within seven (7) calendar days of EPA's approval of the RI/FS Work Plan, Respondents shall commence Task 1 of the RI/FS Work Plan.
- F. The Respondents shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondents, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan during the past month, as well as such actions, data, and

plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth (10th) day of each month following the date of EPA approval of the RI/FS Work Plan.

- G. The Respondents shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final reports and within forty-five (45) calendar days after its receipt of such reports, EPA shall notify the Respondents in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.
- I. Within thirty (30) calendar days after receipt of EPA notification of preliminary or final report disapproval, the Respondents shall amend and submit to EPA the revised reports pursuant to EPA review if in addressing the revisions additional field or laboratory work is not required. If EPA determines that additional field work within the scope of this Consent Order, including resampling or laboratory work is required to complete the revisions, the EPA and the Respondents shall agree on an appropriate amount of time for preparation of the report. In the event of disapproval of the revised report, EPA retains the right to amend such report, to perform additional studies, to conduct a complete RI/FS or portions thereof, pursuant to its authority under CERCLA/SARA; to seek Cost Recovery against Respondents and other potentially responsible parties, and to assess stipulated penalties pursuant to Section XIII of this Consent Order.
- J. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as the Respondents or EPA hereafter may designate in writing.

- (1) Documents (5 copies) to be submitted to EPA should be sent to:

Mr. Jon K. Bornholm  
Site Project Manager  
NSMS/SFB/WMD  
U.S. Environmental Protection Agency  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365



If a document is large enough to require binding, one copy should be left unbound, secured with rubber bands or the like.

- (2) Documents (5) copies to be submitted to the Respondents should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- K. In addition to the EPA-approved tasks and deliverables to be completed pursuant to this Consent Order, EPA may determine that additional tasks, beyond the scope of this Consent Order, including remedial investigative work and/or engineering evaluation, may be necessary as part of the RI/FS. Further, EPA retains the right to request Respondents to perform additional sampling if such is deemed necessary by EPA to adequately investigate the Site. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents in writing. Within ~~fifteen~~ thirty ~~(15)~~ (30) calendar days after receipt of EPA's notice, Respondents shall notify EPA in writing as to whether or not Respondents will agree to conduct the additional tasks. Upon written agreement of EPA and Respondents, this Consent Order may be modified as necessary to address such further investigation and study. Should Respondents not agree to perform these additional tasks and to amend this Consent Order as may be necessary, EPA retains the right to perform any additional work as authorized by CERCLA/SARA, ~~to conduct a complete RI/FS or portion thereof,~~ and to seek cost recovery from Respondents and any other potentially responsible parties. Failure of the Respondents to agree to perform additional work under this Section shall not be a violation of this Consent Order. Any disagreement between the Parties concerning additional work under this Section will not be subject to the Dispute Resolution process (Section XII of this Consent Order).

#### VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA and all documents, including reports, approvals, and their correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

During the course of implementation of the work, the Project Coordinators shall, whenever possible, operate by consensus. The Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

EPA and the Respondents each have the right to change their Respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

The EPA-designated On Scene Coordinator ("OSC")/Remedial Project Manager ("RPM") shall have the authority provided by the National Contingency Plan; 40 C.F.R. Part 300 et seq. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health and/or welfare and/or the environment.

Neither the absence of the EPA Project Coordinator from the Site nor the lack of availability of an EPA representative by phone shall be cause for the stoppage of work except where the approval or concurrence of such a coordinator of EPA is necessary for a particular item of work to continue or be completed or where the cessation of work is necessary to abate an immediate risk of harm to public health, welfare or the environment. Respondents shall notify EPA project coordinator or other designated EPA representatives as soon as possible by phone, that work has been discontinued. Further, within twenty-four (24) hours after work is discontinued, Respondents shall submit to EPA a written explanation of why work was discontinued. Should a disagreement arise between EPA and Respondents concerning Respondents' decision to discontinue work, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" section (Section XII) of this Consent Order.

#### VIII. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain-of custody procedures in accordance with the EPA, Region 4, Environmental Services Division Standard Operating Procedures Manual throughout all sample collection and analysis activities. This manual has been provided to the Respondents by EPA. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondents shall:

- A. Ensure that EPA personnel and/or EPA-authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondents for analyses;

- B. Ensure that the laboratory(s) utilized by the Respondents for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least fourteen (14) calendar days prior to the commencement of analyses:
- C. Ensure that the laboratory(s) utilized by the Respondents for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory(s) shall perform such analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data. A maximum annual number of four (4) per analytical combination, e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, four soil/sediment samples by Gas Chromatography/Mass Spectrometry, etc., may be provided to each laboratory for analysis.

#### IX. SITE ACCESS

To the extent that areas covered by the RI/FS Work Plan are presently owned by parties other than those bound by this Consent Order, the Respondents have obtained or will their reasonable efforts to obtain Site access agreements from the present owners within forty-five (45) calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access by EPA and/or its authorized representatives. In the event that Site access agreements are not obtained within the time referenced above, the Respondents shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within forty-five (45) calendar days of the effective date of this Consent Order. In such event, EPA will assist the Respondents in obtaining such access. Failure by Respondents to obtain Site access agreements, after use of their best efforts, does not constitute a violation of this Consent Order. Work at the Site will be delayed until Site access is obtained.

#### X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondents shall make the results of all sampling and/or tests or other data generated by the Respondents or on the Respondents' behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondents the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondents

pursuant to this implementation of this Consent Order. The Respondents shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity. This notification may be given verbally in the field by the Respondents to EPA's authorized representative.

EPA shall allow split or duplicate samples to be taken by the Respondents of any samples collected by EPA or its contractors during the performance of work associated with this Consent Order and shall notify the Respondents not less than seventy-two (72) hours in advance of any sample collection activity.

EPA and/or its authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes, of inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information provided under this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

#### XI. RECORD PRESERVATION

Respondents shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six (6) year period, the Respondents shall notify EPA within thirty (30) calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondents shall make available to EPA such records or copies of such records.

Additionally, if EPA requests that some or all documents be preserved for a longer period, the Respondents shall comply with such request.

## XII. DISPUTE RESOLUTION

The Project Coordinators shall first attempt to resolve informally all matters concerning the Work Plan activities and the interpretation of this Order. If the Project Coordinators cannot resolve a difference of opinion with respect to such matters within twenty-four (24) hours or if Respondents object to any EPA notice of deficiency or any other decision made pursuant to this Order, Respondents shall notify EPA in writing of their objection within fourteen (14) days of receipt of the notice or decision. EPA and Respondents then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to negotiate in good faith to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondents. EPA then proceed to complete the RI/FS or any part thereof and seek cost recovery. Payment of stipulated penalties with respect to any disputed issues shall be stayed pending resolution of the dispute. In the event Respondents do not prevail in the dispute, stipulated penalties shall be assessed and paid as provided in Section XIII herein. Further, EPA's decision concerning the need for additional tasks, sampling and/or resampling, as set forth in Section VI (K) of this Consent Order, shall not be subject to this Dispute Resolution process.

## XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondents shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondents, which could not have been overcome by due diligence. The Respondents shall promptly notify EPA's Project Coordinator orally and shall, within ten (10) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. Failure of the Respondents to comply with the notice requirements of this paragraph shall render this paragraph void and shall nullify the Respondents' right to request a waiver of the requirements of this Consent Order.

If the parties do not agree as to whether or not the circumstances were beyond the reasonable control of the Respondents, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondents.

Except with respect to any extensions agreed to by the parties in writing, and EPA's consent to an extension shall not be unreasonably withheld, and except for delays from events which constitute a force majeure, the Respondents shall be subject to the imposition of stipulated penalties as set forth below for failure to ~~comply with terms and conditions of this Consent Order~~ and to complete major tasks designated in the RI/FS Work Plan. Major tasks are: submission of the preliminary and/or final Remedial Investigation Reports, the preliminary and/or final Feasibility Study Reports, and/or the Endangerment Assessment and/or the Risk Assessment.

Stipulated penalties shall accrue as follows:

For the 1st through the 14th day of failure to comply with the terms and conditions of the Consent Order, there will be a \$1,000.00 penalty; for the 15th through the 44th day of failure to comply with the terms and conditions of the Consent Order, there will be a \$1,500.00 penalty ~~per violation per day~~; and for the 45th day and beyond, there will be a \$3,000.00 penalty per violation per day.

All stipulated penalties begin to accrue on the day that a violation occurs or on the day following Respondents' failure to comply with any schedule or deadline, or the terms, conditions or requirements contained in this Consent Order and/or Work Plan, and shall continue to accrue until Respondents' violation ends or until Respondents comply with the particular schedule, deadline, term, condition or requirement. However, in no event shall stipulated penalties begin to accrue for any item subject to Dispute Resolution, Section XII, until the dispute resolution process is completed.

Should EPA require that Respondents pay a stipulated penalty during the course of work undertaken pursuant to this Consent Order, payment of such penalty shall be due and owing within fifteen (15) days from the date of receipt of a written notice from EPA notifying Respondents that penalties have been assessed, except to the extent the procedures of Section XII herein, if invoked, delay the required payment date. Payment should be made into the Hazardous Substances Superfund by certified or cashier's check to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously with the required payment to the EPA Project Coordinator.

Interest shall begin to accrue on the unpaid balance at the end of the fifteenth day upon which payment is due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

Stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States.

#### XIV. INCORPORATION OF REPORTS

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject the Respondents to the provisions included in Section XIII above.

#### XV. FORCE MAJEURE

Respondent's activities under this Consent Order shall be performed within the time limits set forth in the RI/FS Work Plan referenced in VI above, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents which could not have been prevented by the exercise of due diligence. Increased costs incurred by Respondents in conducting the RI/FS or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

The Respondents shall notify EPA in writing no later than seven (7) business days from the inception of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent

and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Delay that results from circumstances beyond the control of the respondents that cannot be overcome by due diligence on the Respondents' part shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances beyond the control of the Respondents, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances.

Failure of the Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

#### XVI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, the respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA/SARA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to request that the Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any such work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States.

Respondents reserve all rights that they have or may have to assert claims against persons or entities for matters arising out of the Site or its operation and ownership, including, but not limited to, claims for breach of contract, indemnity, contribution, nuisance and claims under federal, state and local laws.

#### XVII. REIMBURSEMENT OF COSTS



The Respondents shall fully reimburse EPA for all oversight costs, not inconsistent with the NCP, which are incurred by the U.S. Government with respect to this Consent Order. At the end of each fiscal year, EPA shall submit to the Respondents a demand for payment and ~~an~~ a detailed accounting of the oversight costs which are being claimed. The payment shall be due within thirty (30) calendar days of the Respondents' receipt of such a demand and accounting and shall be made by certified or cashiers check, payable to the "Hazardous Substance Superfund".

Checks should specifically reference the identity of the Site and be addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P. O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

A copy of the transmittal letter should be sent to the Project Coordinator.

EPA reserves the right to bring an action against any responsible party pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States from the Fund in connection with response activities conducted pursuant to CERCLA/SARA at this site.

#### XVIII. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity that EPA or the Respondents may have against any person, firm, partnership, or corporation, not a signatory to this Consent Order, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on ~~does not constitute any decision on~~ preauthorization of funds under Section 111(a)(2) of CERCLA.

#### XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided herein.

## XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondents at the Site.

## XXI. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondents which remedial action alternative is approved for the Site.

## XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondents and EPA prior to the issuance of this Consent Order concerning its terms, the Respondents agree that there is not need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order shall be the date on which it is signed by the Regional Administrator of EPA, Region IV.

This Consent Order may be modified by mutual agreement of EPA and the Respondents. Such modifications shall be in writing and shall have as the effective date, that date on which such modifications are signed by EPA.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondent of their obligation to obtain such relieving the Respondent of their obligation to obtain such formal approval as may be required by this Consent Order.

## XXIII. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Respondents or EPA or both.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:	)	Proceeding Under Section
	)	104(a) of the Comprehensive
YELLOW WATER ROAD SITE	)	Environmental Response, Compen-
Baldwin, Duval County,	)	sation, and Liability Act of
Florida	)	1980 (42 U.S.C. §9604(a)) as
	)	amended by the Superfund
	)	Amendments and Reauthorization
	)	Act of 1986, PL 99-499,
	)	October 17, 1986.
	)	
	)	DOCKET NO.: 87-17-C
	)	

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ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereafter called "EPA") with the Respondents who have executed this Consent Order pursuant to the authority vested in the President of the United States by Section 104 and Section 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereafter called "CERCLA"), 42 U.S.C. §9604 and §9622(d)(3), as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereafter called "SARA"). Some of this Presidential authority was delegated to the Administrator of EPA by Executive Order 12316 dated August 14, 1981, 46 Fed. Reg. 42,237 (Aug. 20, 1981) which was redelegated on April 16, 1984 to Regional Administrators in EPA Delegation No.14-14-A. SARA portions of the above-cited sections were delegated by the President to the Administrator of EPA by Executive Order 12580 dated January 26, 1987, 52 Federal Register 2923 (Jan. 29, 1987). (See interim delegations of the Administrator of EPA to Regional Administrators and Assistant Administrators 14-8-B, and 14-14-C, dated February 26, 1987.) These interim delegations authorize Regional Administrators (with the concurrence of EPA Headquarters Assistant Administrators) to enter into administrative orders by consent to perform remedial investigations and feasibility studies (hereafter called "RI/FS").

The Respondents agree to undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of a remedial investigation and feasibility study at the Yellow Water Road Site and any additional work agreed to pursuant to Part VI.K. below.

Solely for the purposes of this Consent Order, the Respondents consent to and agree not to contest EPA jurisdiction to issue this Consent Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA. Provided however, the Respondents do not admit, accept, concede, or acknowledge, and specifically deny the determinations, allegations, findings of fact, and conclusions of law made by EPA in this Consent Order and specifically reserve the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Yellow Water Road Site (hereafter called the "Site") other than actions brought by EPA to enforce this Consent Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Consent Order, waive any rights they may have to assert claims under CERCLA/SARA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21), or the Superfund. The State of Florida's performance and obligation to expend money under this Consent Order is contingent upon an annual appropriation by the state legislature. Failure of the Florida Legislature to appropriate funds to meet the State's obligations under this Consent Order will not be grounds for incomplete execution of this Consent Order by the Respondents.

## II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondents are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants and/or contaminants from the Yellow Water Road Site (Remedial Investigation), and (2) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants and/or contaminants from the Yellow Water Road Site (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 CFR Part 300.68 (a) - (j) (47 Federal Register 31180 (July 16, 1982), revised at 48 Federal Register 40658 (September 8, 1983), and at 48 Federal Register 47973 (November 20, 1985)).

### III. EPA FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

- A. The Yellow Water Road Site is located one mile south of the town of Baldwin, Duval County, Florida, on the Yellow Water Road, State Route 217.
- B. The Respondents are alleged to be generators of waste present at the site.
- C. This site was added to the National Priorities List in May, 1986 as defined in Section 105 of CERCLA, 42 U.S.C. §9605.
- D. Present at this site in June 1987, were approximately 650 transformers, approximately 100,000 gallons of liquids, at least 3000 cubic yards of contaminated soil. EPA personnel tested the liquids and found them to contain Polychlorinated Biphenyls ("PCBs").

### IV. EPA CONCLUSIONS OF LAW

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
- C. Polychlorinated Biphenyls ("PCBs") are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- D. The hazardous substances described above were utilized at the facility in such a manner that they have been released into the environment and their potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

### V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health and/or welfare and/or the environment.

- B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.
- C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1), as amended by SARA, EPA has determined that the Respondents will properly and promptly conduct the RI/FS and are qualified to do so.

#### VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site cleanup. Prior to the initiation of the Site work, the Respondent shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

- A. Within thirty (30) days of the effective date of this Consent Order, the Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to the Respondent by EPA ("Guidance on Remedial Investigations under CERCLA" and "Guidance on Feasibility Studies under CERCLA", both dated June, 1985) and with Section 121 of the Superfund Amendments and Reauthorization Act of 1986. As described in this guidance, the RI/FS Work Plan must include, at a minimum, a sampling plan and a schedule for deliverables and for completing the RI/FS. The Project Operations Plan ("POP") shall be submitted within thirty (30) calendar days after EPA approval of the RI/FS Work Plan. The POP must include: (1) a detailed sampling plan, (2) a health and safety plan, (3) a plan for satisfaction of permitting requirements, (4) a description of chain-of-custody procedures, and (5) a description of quality control and quality assurance procedures. The RI/FS Work Plan and all other reports and plans shall be subject to review, modification, and approval by EPA.
- B. Within forty-five (45) calendar days after receipt of the RI/FS Work Plan by EPA, EPA shall notify the Respondents in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.

- C. Within thirty (30) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondents shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, and upon completion of the dispute process contained in Section XII herein below, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA/SARA.
- D. The Respondents shall implement the tasks detailed in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan") subject to the provisions of Section XII herein below. Upon approval by EPA, the RI/FS Work Plan will be attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents, and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within seven (7) calendar days of approval of the RI/FS Work Plan by EPA, Respondents shall commence Task 1 of the RI/FS Work Plan.
- F. The Respondents shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondents, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan during the past month, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth (10th) day of each month following the date of EPA approval of the RI/FS Work Plan.
- G. The Respondents shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final reports and within forty-five (45) calendar days after receipt by EPA of such reports, EPA shall notify the Respondents in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.
- I. Within thirty (30) calendar days after receipt of EPA notification of preliminary or final report disapproval, the Respondents shall amend and submit to EPA the revised reports

pursuant to EPA review if in addressing the revisions additional field or laboratory work is not required. If field or laboratory work is required to complete the revisions, then EPA and the Respondents shall agree on an appropriate amount of time for preparation of the report. In the event of disapproval, EPA retains the right to amend such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA/SARA.

- J. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as the Respondents or EPA hereafter may designate in writing:

1) Documents (5 copies) to be submitted to EPA should be sent to:

Ms. Kristina Teepe  
Enforcement Project Manager  
ERRB, Waste Management Division  
U.S. Environmental Protection Agency  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

- K. EPA may determine that tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of the Remedial Investigation and Feasibility Study in addition to those tasks included in the Consent Order and Attachment 1. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents. Within thirty (30) days of receipt of this notice, Respondents will notify EPA whether or not Respondents agree to the inclusion of these tasks into this Consent Order. Upon written agreement of the parties hereto, this Consent Order may be modified as necessary to address such further investigation or study. Should Respondents not agree to the inclusion of these tasks, EPA retains the right to perform additional work as authorized by CERCLA and to seek cost recovery. Respondents shall not be subject to stipulated penalties for failure to perform tasks not included in the RI/FS Work Plan.

#### VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA and all documents, including reports, approvals, and their correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.



During the course of implementation of the work, the Project Coordinators shall, whenever possible, operate by consensus. The Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

EPA and the Respondents each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

The EPA-designated On Scene Coordinator ("OSC")/Remedial Project Manager ("RPM") shall have the authority provided by the National Contingency Plan; 40 CFR Part 300 et seq., 47 Federal Register 31180, July 16, 1982, as amended. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health and/or welfare and/or the environment.

The absence of the EPA OSC/RPM from the site shall not be cause for the stoppage of work.

#### VIII. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain-of-custody procedures in accordance with the EPA, Region 4, Environmental Services Division Standard Operating Procedures Manual throughout all sample collection and analysis activities. This manual has been provided to the Respondents by EPA. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall:

- A. Ensure that EPA personnel and/or EPA-authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondent for analyses;
- B. Ensure that the laboratory(s) utilized by the Respondents for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least fourteen (14) calendar days prior to the commencement of analyses;
- C. Ensure that laboratory(s) utilized by the Respondents for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory(s) shall perform such analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data. A maximum annual number of four (4) per

analytical combination, e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, four soil/sediment samples by Gas Chromatography/Mass Spectrometry, etc., may be provided to each laboratory for analysis.

#### IX. SITE ACCESS

To the extent that areas covered by the RI/FS Work Plan are presently owned by parties other than those bound by this Consent Order, the Respondents have obtained or will use their reasonable efforts to obtain Site access agreements from the present owners within forty-five (45) calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access by EPA and/or their authorized representatives. In the event that Site access agreements are not obtained within the time referenced above, the Respondents shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within forty-five (45) calendar days of the effective date of this Consent Order. In such event, EPA will assist the Respondents, or assume the responsibility for obtaining such access. Failure by Respondents to obtain Site access agreements, after use of its best efforts, does not constitute a violation of this Consent Order. Work at an individual site will be delayed until Site access is obtained.

#### X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondents shall make the results of all sampling and/or tests or other data generated by the Respondents or on the Respondents' behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondents the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA and/or their authorized representatives, of any samples collected by the Respondents pursuant to the implementation of this Consent Order. The Respondents shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity. This notification may be given verbally in the field by the Respondents to EPA's authorized representative.

EPA shall allow split or duplicate samples to be taken by the Respondents of any samples collected by EPA or its contractors during the performance of work associated with this Consent Order and shall notify the Respondents not less than seventy-two (72) hours in advance of any sample collection activity.

EPA and/or their authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information provided under this Consent Order pursuant to 40 CFR §2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

#### XI. RECORD PRESERVATION

EPA and the Respondents agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate to the conduct of the RI/FS, despite any document retention policy to the contrary. After this six (6) year period, the Respondents shall make available to EPA such records or copies of such records except those which are attorney work-product or subject to the attorney-client privilege.

#### XII. DISPUTE RESOLUTION

If the Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondents shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of the decision. EPA and the Respondents then have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) calendar day period, EPA shall provide a written statement of its decision to the Respondents.

XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondents shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondents which could not have been overcome by due diligence. The Respondents shall promptly notify EPA's Project Coordinator orally and shall, within ten (10) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

If the parties do not agree as to whether or not the circumstances were beyond the reasonable control of the Respondents, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order.

Except with respect to any extensions agreed to by the parties in writing, and EPA's consent to an extension shall not be unreasonably withheld, and except for delays from events which constitute a force majeure, the Respondents shall be subject to the imposition of stipulated penalties as set forth below for failure to complete major tasks designated in the RI/FS Work Plan. Those major tasks include the submittal of the preliminary and/or final Remedial Investigation Reports, the preliminary and/or final Feasibility Study Reports, and/or the Endangerment Assessment and/or the Risk Assessment.

Stipulated penalties shall accrue as follows:

For the 8th through the 14th day of failure to comply with the terms and conditions of the Consent Order, there will be a \$250.00 penalty per violation per day; for the 15th through the 44th day of failure to comply with the terms and conditions of the Consent Order, there will be a \$500.00 penalty per violation per day; and for the 45th day and beyond, there will be a \$1,000.00 penalty per violation per day.

Checks should be addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P. O. Box 371003M  
Pittsburgh, PA 15251  
Attn: (Collection Officer for Superfund)

#### XIV. INCORPORATION OF REPORTS

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order.

#### XV. FORCE MAJEURE

Respondent's activities under this Consent Order shall be performed within the time limits set forth in the RI/FS Work Plan referenced in VI above, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents (for example, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable labor strikes, adverse weather conditions, contractor failures, and the unforeseeable inability to obtain necessary permits, licenses, certifications) which could not have been prevented by the exercise of due diligence. Increased costs incurred by Respondents in conducting the RI/FS or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

The Respondents shall notify EPA in writing no later than ten (10) business days from the inception of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Delay that results from circumstances beyond the control of the Respondents that cannot be overcome by due diligence on the Respondents' part shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances beyond the control of the Respondents, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances.

Failure of the Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

#### XVI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, the Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA/SARA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to request that the Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any such work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions, other than those required by this Consent Order, at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States.

Respondents reserve all rights that they have or may have to assert claims against persons or entities for matters arising out of the Site or its operation and ownership, including, but not limited to, claims for breach of contract, indemnity, contribution, nuisance and claims under federal, state and local laws.

#### XVII. REIMBURSEMENT OF COSTS

At the end of each fiscal year, EPA shall submit to the Respondents an accounting of all oversight costs incurred by the U. S. Government with respect to this Consent Order. The Respondents shall, within thirty (30) calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Response Fund. Checks should specifically reference the identity of the site and be addressed to:

U. S. Environmental Protection Agency  
Superfund Accounting  
P. O. Box 371003M  
Pittsburgh, PA 15251  
Attention: (Collection Officer for Superfund)

A copy of the transmittal letter should be sent to the Project Coordinator.

EPA reserves the right to bring an action against any responsible party pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States from the Fund in connection with response activities conducted pursuant to CERCLA/SARA at this site.

#### XVIII. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity by EPA or the Respondents against any person, firm, partnership, or corporation, not a signatory to this Consent Order, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

#### XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided herein.

#### XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

The Respondents agree to indemnify and save and hold the United States Environmental Protection Agency, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondents, their agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondents at the Site. The liability of EPA, its employees and agents, for their acts and omissions, shall be as set forth in the Federal Torts Claims Act and other applicable statutes. The State of Florida's obligation to indemnify and save and hold harmless is limited to an amount that bears the same ratio to the total amount to be indemnified as the State of Florida's allocation amount bears to the total cost of the remedial action and the State of Florida's obligation to indemnify and save and hold harmless is contingent upon an annual appropriation by the Florida Legislature.

XXI. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondents which remedial action alternative is approved for the Site.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondents and EPA prior to the issuance of this Consent Order concerning its terms, the Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order shall be the date on which it is signed by EPA.

This Consent Order may be modified by mutual agreement of EPA and the Respondents. Such modifications shall be in writing and shall have as the effective date, that date on which such modifications are signed by EPA.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondent of their obligation to obtain such formal approval as may be required by this Consent Order.

XXIII. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Respondents or EPA or both.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondents or in any way alter the Respondents' responsibility under this Consent Order. The Respondents will remain the Respondents under this Consent Order and will be responsible for carrying out all activities required of the Respondents under this Consent Order.

The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within fourteen (14) calendar days of the effective date of this Consent Order or date of such retention.



XXIV. NOTICE TO THE STATE

EPA has notified the State of Florida pursuant to the requirements of Section 106(a) of CERCLA.

XXV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondents' receipt of written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed and that those actions are consistent with the National Contingency Plan. Upon receipt by Respondents of the above notice, Respondents shall be released from any claim for the cost of a Remedial Investigation/Feasibility Study for the Yellow Water Road Site. The costs incurred by respondents in performing the RI/FS shall not be deemed to be a penalty.

IT IS SO AGREED AND ORDERED:

BY: Lee A. DeHihns, III

SEP 24 1987

Lee A. DeHihns, III  
Acting Regional Administrator  
U. S. Environmental Protection Agency  
Region IV

Date

EFFECTIVE DATE: September 24, 1987

CONSENT

The Respondent identified below hereby consents to the issuance of this Consent Order and to its terms. Furthermore, the signatory to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent so represented by him or her to the Consent Order.

Respondent (Please type name)

By: (Please type name and  
title of Official below)

1-12-81

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

In the Matter of: )  
 )  
JADCO-HUGHES SITE )  
Belmont, North Carolina )  
 )  
Respondent. )  
 )  
Proceeding Under Section )  
106(a) of the Comprehensive )  
Environmental Response, )  
Compensation and Liability )  
Act of 1980 (42 U.S.C. )  
§ 9606(a)) )  
\_\_\_\_\_ )

U.S. EPA DOCKET NO. 86-21-C

ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Consent Order is entered into by the United States Environmental Protection Agency (EPA) with Respondents identified below pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) on August 14, 1981, by Executive Order 12316, 45 Fed. Reg. 42237, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14 and 14-14-A, the latter of which was signed on April 16, 1984.

Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. Respondents also consent to and will not contest EPA jurisdiction regarding this Consent Order. Respondents do not admit to any of the factual findings or legal conclusions or determinations made by EPA in this order and Respondents reserve all rights and defenses regarding liability and responsibility in any subsequent proceedings regarding the site other than proceedings to enforce this order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the Jadco-Hughes site (Remedial Investigation), and (2) to evaluate alternatives for the

EXHIBIT  
(5012)  
9

appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Jadco-Hughes site (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 C.F.R. Part 300.68(a)-(j) (47 Fed. Reg. 31180 (July 16, 1982), revised at 48 Fed. Reg. 40658 (September 8, 1983)).

### III. FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

- A. The Jadco-Hughes site ("Site") is approximately six acres and is located in Belmont, Gaston County, which is approximately 12 miles west of Charlotte, North Carolina.
- B. The Jadco-Hughes facility was a chemical storage and recovery plant. Prior to 1975, a large number of 55-gallon drums had accumulated on the Site in varying degrees of deterioration. A court order issued in 1975 required the removal of the drums. Most drums were removed in 1977. The remaining drums and tanks were removed in 1983.
- C. The Site is on the National Priorities List as defined in Section 105 of CERCLA, 42 U.S.C. § 9605.
- D. A sampling study of the Site was conducted by representatives of EPA on March 21-25 and August 15-18, 1983.
- E. The sampling study revealed that surface waters, sediments, and on-site soils contained measurable levels of hazardous substances.

### IV. EPA'S CONCLUSIONS OF LAW

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. The presence of hazardous substances at the site, their past and potential migration to surrounding soils, surface water, and groundwater, constitutes both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

### V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

#### VI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondents and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either Respondents or EPA or both.

No change in ownership of Respondents or their corporate or partnership status will in any way alter the status of the Respondents or in any way alter the Respondent's responsibility under this Consent Order. The Respondents will remain the Respondents under this Consent Order and will be responsible for carrying out all activities required of the Respondents under this Consent Order.

Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants, retained to conduct any portion of the work performed pursuant to this Consent Order within fourteen (14) calendar days of the effective date of this Consent Order or date of such retention, whichever is applicable.

#### VII. NOTICE TO THE STATE

The requirement of Section 106(a) of CERCLA to notify the State of North Carolina has been satisfied.

#### VIII. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site cleanup. Prior to the initiation of the Site work, Respondents shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed.

- A. Within sixty (60) days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to Respondents by EPA. As described in this guidance, the RI/FS Work Plan must include:

- (1) a sampling plan, (2) a health and safety plan, (3) a community relations plan, (4) a plan for satisfaction and permitting requirements, (5) a description of chain of custody procedures, and (6) a description of quality control and quality assurance procedures. The RI/FS Work Plan shall be subject to review, modification, and approved by EPA.
- B. Within thirty (30) calendar days after receipt of the RI/FS Work Plan by EPA, EPA shall notify Respondents in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.
- C. Within fifteen (15) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, Respondents shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA.
- D. Respondents shall implement the tasks detailed in the RI/FS Work Plan. Upon approval by EPA, the RI/FS Work Plan will be attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within seven (7) calendar days of approval of the RI/FS Work Plan by EPA, Respondents shall commence Task 1 of the RI/FS Work Plan.
- F. Respondents shall provide monthly written progress reports to EPA. At a minimum these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by Respondents, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan during the past month, as well as such actions, data and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth day of each month following the date of EPA approval of the RI/FS Work Plan.
- G. Respondents shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final reports and within thirty (30) calendar days of receipt by EPA of such reports, EPA shall notify Respondents in writing of EPA's approval or

disapproval of reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.

- I. Within thirty (30) calendar days of receipt of EPA notification of preliminary or final report disapproval, Respondents shall amend and submit to EPA such revised reports. In the event of disapproval, and following the dispute resolution procedure, EPA retains the right to amend such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA.
- J. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as Respondents or EPA hereafter may designate in writing:
  1. Documents to be submitted to EPA should be sent to: (5 copies)

Pauline F. Anderson  
U.S. Environmental Protection Agency  
ERRB/ICS  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365
  2. Documents to be submitted to Respondents should be sent to:

Jadco-Hughes Steering Committee  
RI/FS Coordinator
- K. In addition to the EPA-approved tasks and deliverables to be completed pursuant to this Consent Order, EPA may determine that additional tasks, including remedial investigatory work and/or engineering evaluation, may be necessary as part of the RI/FS. If the parties agree, these tasks will be incorporated in the Work Plan and become a part of this Order. If the parties do not agree, EPA shall have the right to perform the additional tasks and seek recovery of the costs of performing the additional tasks.

#### IX. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between Respondents and EPA and all documents, including reports, approvals, and their correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinator.

EPA and Respondents each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

The EPA Project Coordinator shall have the authority vested in the On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300, et seq., 47 Fed. Reg. 31160 (July 16, 1982). This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health or welfare or the environment.

The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage of work.

#### X. QUALITY ASSURANCE

Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the EPA, Region IV, Environmental Services Division Standard Operating Procedures Manual throughout all sample collection and analysis activities. This manual shall be provided to Respondents by EPA. Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. Respondents shall ensure that EPA personnel are allowed access to the laboratory utilized by Respondents for analysis of samples collected pursuant to this Consent Order. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondents shall:

A. Ensure that the laboratory(s) utilized by Respondents for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least fourteen (14) calendar days prior to the commencement of analysis.

B. Ensure that laboratory(s) utilized by Respondents for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, Respondents shall ensure that such laboratory(s) perform such analysis according to EPA methods or methods deemed satisfactory by EPA and submit all protocols to be used for analysis to EPA. The laboratory and the quality of its analytical data shall be approved by EPA at least fourteen (14) calendar days prior to commencement of analysis. A maximum annual number of four per analytical combination; e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, etc., may be provided to each laboratory by EPA for analysis to demonstrate the quality of each laboratory's analytical data.

## XI. SITE ACCESS

To the extent that areas covered by the Work Plan are presently owned by parties other than those bound by this Consent Order, Respondents have obtained or will use their best efforts to obtain site access agreements from the present owners. Such agreements shall provide reasonable access to EPA and/or their authorized representatives. In the event that site access agreements are not obtained within a reasonable time after entry of this order, Respondents shall notify EPA regarding both the lack of and efforts to obtain such agreements and EPA shall obtain access for Respondents.

## XII. SAMPLING, ACCESS AND DATA/DOCUMENT AVAILABILITY

Respondents shall make the results of all sampling and/or tests or other data relating to the RI/FS available to EPA and shall submit these results in monthly progress reports as described in Section VIII of this Consent Order. EPA will make available to Respondents the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA and/or their authorized representatives, of any samples collected by Respondents pursuant to the implementation of this Consent Order. Respondents shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity.

EPA and/or their authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by Respondents. Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

Respondents may assert a confidentiality claim if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.



### XIII. RECORD PRESERVATION

Respondents agree to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all data and documents (written and/or electronic) relating to the conduct of the RI/FS. Upon request by EPA, Respondents shall make available to shall make available to EPA all such data or documents except for privileged documents.

### XIV. DISPUTE RESOLUTION

If Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, Respondents shall notify EPA in writing of their objections within fourteen (14) days of receipt of the decision. EPA and Respondents then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall immediately provide a written statement of its decision to Respondents.

### XV. DELAY IN PERFORMANCE - STIPULATED PENALTIES

Except with respect to any extensions agreed to by the parties in writing, and EPA's consent to an extension shall not be unreasonably withheld, and except for delays resulting from events which constitute a force majeure as defined below, Respondents shall be subject to the imposition of stipulated penalties for failure to submit the Work Plan and complete the major tasks designated in the Work Plan. Stipulated penalties may be imposed in the amount of \$1,000 for the second week and \$2,000 for each week thereafter for failure to meet the above-referenced requirements. Respondents shall give EPA verbal notice followed by written notice whenever any deadline for any major task will not be met. Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order.

### XVI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA-approved Remedial Investigation and Feasibility Study, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the site. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to request that the Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the

Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any remedial investigation and/or feasibility study work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions, other than those required by this Consent Order, at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States or the State of North Carolina.

#### XVII. FORCE MAJEURE

Respondents' activities under this Order shall be performed within the time limits set forth in the Work Plan unless performance is delayed by events or circumstances which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event or circumstance arising from causes beyond the reasonable control of Respondents. Respondents shall notify EPA in writing within a reasonable time after the inception of any event which Respondents contend constitutes a force majeure. Increased costs shall not constitute a force majeure.

#### XVIII. REIMBURSEMENT OF COSTS

Respondents agree to reimburse EPA up to \$55,000 in satisfaction of EPA's claim against Respondents for the oversight costs associated with this Order. EPA will provide Respondents with documentation of its oversight costs.

#### XIX. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

#### XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided herein.

#### XXI. INDEMNIFICATION OF EPA

Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees,

harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving Respondents at the Site.

#### XXII. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make such Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify Respondents which remedial action alternative is approved for the Site. EPA's final selection and approval of a remedial action alternative shall constitute a Record of Decision for the site.

#### XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order shall be the date on which it is signed by EPA. In consideration of communications between Respondents and EPA concerning the terms of this Consent Order, Respondents waive any rights they may have to confer with EPA prior to the effective date of this Consent Order.

This Consent Order may be modified by mutual agreement of EPA and Respondents. Such modifications shall be in writing and shall have as the effective date, that date on which such modifications are signed by EPA.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Consent Order.

#### XXIV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order have been completed.

#### XXV. NCP CERTIFICATION

Upon EPA's determination that Respondents have completed the Work Plan, EPA agrees to certify the work done as being consistent with the NCP.

IT IS SO AGREED AND ORDERED:

By: Le A. D. Gilman, acting  
Jack E. Ravan  
Regional Administrator  
Region IV  
U.S. Environmental Protection Agency

9/30/86  
Date

CONSENT

Eaton Corporation, one of the  
Respondents in this proceeding, has had an opportunity to confer  
with EPA and hereby consents to the issuance and terms of the  
foregoing Administrative Order on Consent for the performance of  
the Remedial Investigation and Feasibility Study at the  
Jadco-Hughes Site in Belmont, North Carolina.

Thomas J. Baechle Thomas J. Baechle  
TITLE Counsel-Environment

9/22/86  
DATE

CONSENT

BENJAMIN MOORE & CO., one of the  
Respondents in this proceeding, has had an opportunity to confer  
with EPA and hereby consents to the issuance and terms of the  
foregoing Administrative Order on Consent for the performance of  
the Remedial Investigation and Feasibility Study at the  
Jadco-Hughes Site in Belmont, North Carolina.  
BENJAMIN MOORE & CO.

BY: John E. Lynch  
TITLE Vice President Operations

September 22, 1986

DATE

CONSENT

Universal Chemical Company, Inc., one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

Benton R Leach

Director, Environmental Affairs  
TITLE

September 22, 1986  
DATE

# CONSENT

National Starch and Chemical Corporation (Proctor Chemical), one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco/Hughes Site in Belmont, North Carolina.

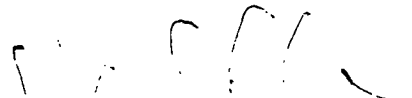
D. F. Peck  
TITLE: D. F. Peck  
Group Vice President

9/17/86  
DATE



CONSENT

Strawberry Hill Press, one of the Respondents in this proceeding, has had an opportunity to confer with the EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

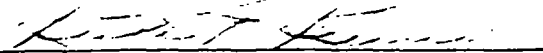
  
\_\_\_\_\_  
Paul S. Lux, its Attorney

September 15, 1986  
Date

20 Grays Plain Road  
Sandy Hook, CT 06482  
(203) 426-8332

CONSENT

Rexham Corporation, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

  
\_\_\_\_\_  
Title: Keith F. Kennedy  
Senior Vice President-Law

Sept. 15, 1986  
Date

CONSENT

Loren Mc Manus, one of the  
Respondents in this proceeding, has had an opportunity to confer  
with EPA and hereby consents to the issuance and terms of the  
foregoing Administrative Order on Consent for the performance of  
the Remedial Investigation and Feasibility Study at the  
Jadco-Hughes Site in Belmont, North Carolina.

Loren Mc Manus, Counsel  
TITLE

September 18, 1986  
DATE

CONSENT


ATHOL MFG CORP, one of the  
Respondents in this proceeding, has had an opportunity to confer  
with EPA and hereby consents to the issuance and terms of the  
foregoing Administrative Order on Consent for the performance of  
the Remedial Investigation and Feasibility Study at the  
Jadco-Hughes Site in Belmont, North Carolina.

W. J. Prochi PRES  
TITLE

9-16-86  
DATE

CONSENT

BASF Corporation, Inmont Division, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

  
by Philip R. Arvidson  
TITLE Vice President-Ecology

September 19, 1986  
DATE

CONSENT

The Knight Publishing Company, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

  
\_\_\_\_\_  
TITLE

TREASURER

9-17-86  
DATE

CONSENT

CELANESE CORPORATION, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

Gary R. Lee  
TITLE

9/19/86  
DATE

CONSENT

Reynolds Metals Company, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the foregoing Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Jadco-Hughes Site in Belmont, North Carolina.

Rodney E. Manneman

TITLE

Rodney E. Manneman, Vice President  
Corporate Quality Assurance and  
Technology Operations

JEM

September 19, 1986

DATE



**CONSENT**

Occidental Electrochemicals Corporation  
(formerly Diamond Shamrock Chemicals Company)

\_\_\_\_\_, one of the  
Respondents in this proceeding, has had an opportunity to confer  
with EPA and hereby consents to the issuance and terms of the  
foregoing Administrative Order on Consent for the performance of  
the Remedial Investigation and Feasibility Study at the  
Jadco-Hughes Site in Belmont, North Carolina.

  
\_\_\_\_\_  
**TITLE**

Michael J. Rudick, Vice President  
Occidental Electrochemicals Corporation  
(formerly Diamond Shamrock Chemicals Company)

January 13, 1987  
\_\_\_\_\_  
**DATE**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

In The Matter Of:

NATIONAL STARCH AND CHEMICAL  
CORPORATION  
Cedar Springs Road  
Salisbury, North Carolina

NATIONAL STARCH AND CHEMICAL  
CORPORATION  
Finderne Avenue  
Bridgewater, New Jersey,

Respondent.

Proceeding Under Section  
106(a) of the Comprehensive  
Environmental Response,  
Compensation and Liability  
Act of 1980 (42 U.S.C. §9606(a))

DOCKET NO. 87-01-C

ADMINISTRATIVE ORDER ON CONSENT

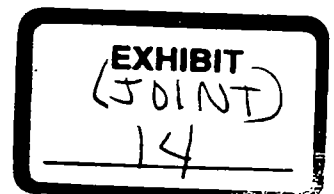
I. JURISDICTION

This Administrative Order on Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with National Starch and Chemical Corporation (National Starch or Respondent) pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), and delegated to the Administrator of EPA by Executive Order 12316 dated August 14, 1981, 46 Federal Register 42237 (1981) and further delegated to the Regional Administrator, EPA Delegation No. 14-14-A, the latter of which was signed on April 16, 1984.

The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and National Starch are: (A) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the National



Starch site (Remedial Investigation); and (B) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the National Starch site (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 CFR Part 300.68 (a) - (j), 47 Federal Register 31180 (July 16, 1982), revised at 48 Federal Register 40658 (September 8, 1983) and at 50 Federal Register 47973 (November 20, 1985).

### III. FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

A. National Starch and Chemical Corporation, a Delaware Corporation, operates a manufacturing facility in Salisbury, Rowan County, North Carolina. This facility manufactures textile finishing and custom specialty chemicals.

B. The National Starch Site (the "Site") is a 465-acre tract of land on which National Starch operates its chemical manufacturing facility. During the 1970's, National Starch disposed of wastewater in several trenches on a two-acre portion of the Site. This wastewater contained small quantities of solvents and metals. Results of groundwater testing in this disposal area show low levels of toluene, xylene, 1-2-dichloroethane, allyl alcohol, arsenic, chromium, cadmium and zinc.

C. EPA has proposed the National Starch site for inclusion on the National Priorities List as defined in Section 105 of CERCLA, 42 U.S.C. §9605.

D. The topography of the area surrounding the Site is gently sloping uplands intercut by several small tributaries to Grant's Creek. Farmland is located to the south of the Site and residential areas are situated north and southwest of the Site.

### IV. EPA'S CONCLUSIONS OF LAW

A. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

C. The chemicals found in the groundwater, as described in Paragraph III.B. above are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

D. The presence of hazardous substances at the Site, their past and potential migration to surrounding soils and groundwater, constitute both an actual and a threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

V. EPA'S DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise and experience in hazardous waste site clean up. Prior to the initiation of the site work, the Respondent shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED to and ORDERED that the following work shall be performed:

A. Within thirty (30) calendar days of the effective date of this Consent Order, the Respondent shall submit to EPA a work plan for a complete Remedial Investigation and Feasibility Study (RI/FS work Plan). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to the Respondent by EPA. As described in this guidance, the RI/FS Work Plan must include: (1) a sampling plan; (2) a health and safety plan; (3) a community relations plan; (4) a plan for satisfaction of permitting requirements; (5) a description of chain-of-custody procedures; and (6) a description of quality control and quality assurance procedures. The RI/FS Work Plan shall be subject to review, modification and approval by EPA.

B. After receipt of the RI/FS Work Plan by EPA, EPA shall notify the Respondent in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modification regarding the RI/FS Work Plan.

C. Within twenty (20) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondent shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA.

D. The Respondent shall implement the tasks detailed in the approved RI/FS Work Plan which will be approved by EPA and will be attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA RI/FS guidance documents and with the standards, specifications, and schedule contained in the approved RI/FS Work Plan.

E. Within seven (7) calendar days of receipt of written approval of the RI/FS Work Plan by EPA, Respondent shall commence Task I of the RI/FS Work Plan.

F. The Respondent shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order; (2) include all results of sampling and tests and all other data received by the Respondent; and (3) include all plans and procedures completed during the past month, subsequent to EPA approval of the RI/FS Work Plan, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth day of each month following the date of EPA approval of the RI/FS Work Plan.

G. The Respondent shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.

H. EPA shall review the preliminary and final reports and within 30 calendar days of receipt by EPA of such reports, EPA shall notify the Respondent in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.

I. Within 30 calendar days of receipt of EPA notification of preliminary or final report disapproval, the Respondent shall amend and submit to EPA such revised reports for EPA review. In the event of disapproval, EPA retains the right to amend such reports, to perform additional studies, or to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA.

J. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as the Respondents or EPA hereafter may designate in writing:

- 1) Documents (5 copies) to be submitted to EPA should be sent to:

Giezelle S. Bennett  
Enforcement Project Manager  
U.S. EPA - Region IV, ERRB/ICS  
345 Courtland St., N.E.  
Atlanta, Georgia 30365

- 2) Documents to be submitted to the Respondent should be sent to:

Alex M. Samson, Jr.  
National Starch and Chemical Corporation  
10 FINDERNE AVENUE  
P.O. Box 6500  
BRIDGEWATER, New Jersey 08807

K. In addition to the EPA-approved tasks and deliverables to be completed pursuant to this Consent Order, EPA may determine that additional tasks, including remedial investigatory work and/or engineering evaluation, may be necessary as part of the RI/FS. If the parties agree, these tasks will be incorporated in the Work Plan and become a part of this Order. If the parties do not agree, EPA shall have the right to perform the additional tasks and seek recovery of the costs of performing the additional tasks.

#### VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA concerning the activities performed pursuant to the terms and conditions of this Consent Order including reports, approvals, and other correspondence, shall be directed through the Project Coordinators. EPA and the Respondent each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

The EPA designated On-Scene Coordinator, who may be the Project Coordinator, shall have the authority vested in the On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300 et seq., 47 Federal Register 31180 (July 16, 1982). This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health or welfare or the environment.

The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage of work.

#### VIII. QUALITY ASSURANCE

The Respondent shall use quality assurance, quality control, and chain-of-custody procedures in accordance with the EPA, Region 4, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual, U. S. Environmental Protection Agency, Region IV, Environmental Services Division, April 1, 1986, throughout all sample collection and analysis activities. This manual shall be provided to the Respondents by EPA. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall:

- A. Ensure that EPA personnel and/or EPA authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondent for analyses.
- B. Ensure that the laboratory(s) utilized by the Respondent for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least 14 calendar days prior to the commencement of the analysis.
- C. Ensure that the laboratory(s) utilized by the Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory(s) shall perform analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data. A maximum annual number of four per analytical combination; e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, etc., may be provided to each laboratory for analysis.

#### IX. SITE ACCESS

To the extent that areas covered by the Work Plan are presently owned by parties other than those bound by this Consent Order, the Respondent has obtained or will use its best efforts to obtain site access agreements from the present owners. Such agreements shall provide reasonable access to EPA and/or their authorized representatives. In the event that site access agreements are not obtained within a reasonable time after entry of this

Order, the Respondent shall notify EPA regarding both the lack of, and efforts to obtain such agreements and EPA shall obtain such agreements and EPA shall obtain access for the Respondent.

#### X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify EPA not less than 72 hours in advance of any sample collection activity. This notification may be given verbally in the field by the Respondent to EPA's authorized representative.

EPA and/or any EPA-authorized representative shall at least have the authority to enter and freely move about all property at the Site at all reasonable times for the purpose of inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

#### XI. RECORD PRESERVATION

EPA and the Respondent agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents developed pursuant to this Consent Order, despite



any document retention policy to the contrary. After this six-year period, the Respondent shall notify EPA within 30 calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondent shall make available to EPA such records or copies of such records, except for privileged documents. Additionally, if EPA requests that some or all documents be preserved for a longer period, the Respondent shall comply with such request.

## XII. DISPUTE RESOLUTION

If the Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objections within fourteen (14) days of receipt of the decision. EPA and the Respondent then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent.

## XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondent. The Respondent shall promptly notify EPA's Project Coordinator orally and shall, within seven (7) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to request a waiver of the requirements of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. In the event that EPA and the Respondent cannot agree that any delay in the achievement of the requirements of this Consent Order, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the Respondent, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order.

Unless excused by the provisions above, the Respondent shall pay into the Hazardous Substance Response Fund, administered by EPA, the sums set forth below as stipulated penalties. Checks should be addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
Attn: Collection Officer for Superfund

Stipulated penalties shall accrue as follows:

For the first week of failure to comply with the major tasks designated in the work plan there will be a penalty of \$1000, and for each week thereafter \$2000.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue remedies or sanctions, which may be available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States and the State of North Carolina.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order.

#### XIV. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA-approved Remedial Investigation and Feasibility Study, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the site. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

The Respondent and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondent declines to perform any additional and/or modified tasks, EPA will have the right to undertake such work and to complete the RI/FS. In addition, EPA reserves the right

to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States or the State of North Carolina.

#### XV. REIMBURSEMENT OF COSTS

At the end of each year, EPA shall submit to the Respondent an accounting of all ~~response and~~ oversight costs incurred by the U.S. Government with respect to this Consent Order. The Respondent agrees to reimburse EPA up to \$70,000 in satisfaction of EPA's claim against the Respondent for the oversight costs associated with this Order. The Respondent shall, within 30 calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Response Trust Fund. Checks should specifically reference the identity of the site and be addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
ATTN: Collection Officer for Superfund

A copy of the transmittal letter should be sent to the Project Coordinator.

If this Order is terminated pursuant to paragraph XXIII, the Respondent will reimburse EPA for its oversight costs incurred to the termination date up to the \$70,000 maximum.

#### XVI. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity that EPA may have against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

#### XVII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations consistent with EPA policy unless an exemption from such requirements is specifically provided herein.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or in any way alter the Respondent's responsibility under this Consent Order. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order.

The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within fourteen (14) calendar days of the effective date of this Consent Order or date of such retention.

XXII. NOTICE TO THE STATE

The requirement of Section 106(a) of CERCLA to notify the State of North Carolina has been satisfied.

XXIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondent's submission of written notice to EPA that the Respondent has completed all work agreed to pursuant to this Consent Order. The responsibilities assumed by Respondent pursuant to this Consent Order shall terminate if a final decision is made not to list this Site on the National Priorities List.

It is AGREED and ORDERED:

BY: \_\_\_\_\_  
Jack E. Ravan  
Regional Administrator  
U.S. Environmental Protection  
Agency  
Region IV

\_\_\_\_\_  
Date

BY: Alexander M. Sullivan, Jr.  
National Starch and  
Chemical Company Corporation

\_\_\_\_\_  
Date

EFFECTIVE DATE: \_\_\_\_\_